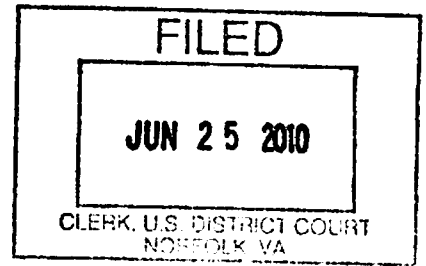


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



STEVEN WHISENANT,

Plaintiff,

v.

ACTION NO. 2:08cv149

DR. THOMPSON, M.D.
DR. KOLONGO, M.D., and
MR. ABLASEAU, Nurse,

Defendants.

REPORT AND RECOMMENDATION

A. Procedural History

Plaintiff, a former Virginia inmate, brought this pro se action pursuant to 42 U.S.C. § 1983 to redress an alleged violation of his constitutional rights. By Order entered January 26, 2010, the District Court designated the undersigned to conduct hearings, if necessary, and submit recommendations for the disposition of this case.

By Order dated May 6, 2010, the Court notified all interested parties that Plaintiff is deceased. The Court ordered Defendants to determine whether Plaintiff's estate had an executor or representative who might wish to pursue this action on Plaintiff's behalf. Counsel for Defendants contacted Plaintiff's mother. Plaintiff's mother informed counsel that there was no estate and no representative. She indicated that she had no interest in maintaining this action.

B. Findings

The Court finds that this action cannot proceed. There is no representative to undertake this litigation on Plaintiff's behalf. Plaintiff's nearest relative does not wish to pursue this matter. Moreover, Plaintiff's testimony at trial would be critical to the maintenance of this action.

C. Recommendation

Accordingly, the Court recommends dismissal of this action without prejudice to the right of Plaintiff's successors or representatives to resubmit the case.

D. Review Procedure

By copy of this Report and Recommendation, the parties are notified that pursuant to 28 U.S.C. § 636(b)(1)(C):

1. Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within fourteen (14) days from the date of mailing of this report to the objecting party, see 28 U.S.C. § 636(b)(1)(C), computed pursuant to Rule 6(a) of the Federal Rules of Civil Procedure, plus three (3) days permitted by Rule 6(d) of said rules. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof.

2. A district judge shall make a de novo determination of those portions of this report or specified findings or recommendations to which objection is made.

The parties are further notified that failure to file timely objections to the findings and recommendations set forth above will result in waiver of right to appeal from a judgment of this court based on such findings and recommendations. Thomas v. Arn, 474 U.S. 140 (1985); Carr v. Hutto, 737 F.2d 433 (4th Cir. 1984); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is **DIRECTED** to send a copy of this Report and Recommendation to counsel for all Defendants and to Plaintiff's mother.

IT IS SO ORDERED.

/s/ *TEM*
Tommy E. Miller
UNITED STATES MAGISTRATE JUDGE

Norfolk, Virginia

June *24*, 2010